

REFLECTION OF MULTICULTURALISM IN LAW: THE OTTOMAN EXPERIENCE

Çokkültürlülüğün Hukuka Yansıması: Osmanlı Tecrübesi

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ABSTRACT

In the Ottoman state there were so many ethnic, religious groups that had different cultures. Contemporary advanced countries should take lessons from the Ottoman State experience because there were a lot of communities had different life style and culture in the Ottoman State like contemporary states and these communities lived in harmony with each other. Although contemporary doctrines are not agreed with the definition of multiculturalism, the different culture and life style in the Ottoman State correspond to the multiculturalism. These multicultural communities in the Ottoman State affect the Ottoman Law system. The Ottoman state showed respect to their diversity and allow them to carry out their own specific law to solve some conflicts between themselves. Especially civil law disputes such as family law, inheritance law etc. were completed in accordance with their own rules. Even the Ottoman State permitted them to establish their private courts. This kind of law system defined as legal pluralism in nowadays corresponds to Ottoman Millet System in Turkish Law History literature. In this presentation I will mention the details of Ottoman Millet System and argue how contemporary states dealing with multiculturalism can take lessons from Ottoman experience. I will apply primary sources such as Ottoman Judges (Qadı) records, state archives records in this study.

Keywords: Multiculturalism, Ottoman Law System, Millet System, Dhimmi

ÖZET

Osmanlı Devlet’inde farklı kültüre sahip birçok etnik dini gruplar vardır. Çağdaş gelişmiş ülkeler, Osmanlı Devleti tecrübesinden dersler çıkarmalıdır; zira Osmanlı Devleti’nde de çağdaş devletlerde olduğu gibi birbirinden farklı yaşam tarzları ve kültürü olan birçok topluluk mevcut olmuş ve bu topluluklar uzunca bir süre uyum içerisinde bir arada yaşamışlardır. Her ne kadar çağdaş literatür çokkültürlülüğün tanımı hususunda hemfikir olamasa da Osmanlı Devleti’ndeki farklı kültür ve yaşam tarzı çokkültürlülüğe tekabül etmektedir. Osmanlı Devleti’ndeki bu çokkültürlü yapı hukuk sistemini de etkilemektedir. Osmanlı Devleti farklılıklara saygı göstermiş ve farklı grupların kendi aralarındaki uyuşmazlıklarında kendi hukuklarının uygulanmasına müsaade etmiştir. Özellikle aile, miras gibi özel hukuk uyuşmazlıkları kendi hukuk kuralları çerçevesinde çözümlenmiştir. Hatta bu grupların kendi mahkemelerinin kurulmasına dahi izin verilmiştir. Türk Hukuk Tarihi literatüründe Osmanlı Millet sistemi olarak nitelendirilen bu sistem günümüzde çokhukukluluk olarak da zikredilmektedir. Bu çalışmada Osmanlı millet sistemi hakkında bilgi verilip, çağdaş devletlerin Osmanlı tecrübesinden ne gibi dersler çıkarılması gerektiği üzerinde durulacaktır. Çalışmada kadı sicilleri, mühimme defterleri gibi birincil kaynaklardan yararlanılmıştır.

Anahtar Kelimeler: Çokkültürlülük, Osmanlı Hukuk sistem, Millet Sistemi, Zimmet

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INTRODUCTION

In our age, people and communities from different cultures live together in the same society. Civil wars, economic crises, political changes and technological developments force people to move to a different environment, leaving their own culture. Current conflicts in Syria can be an example of both political and civil war. Due to the need for labor in 1960s, Germany opened the doors for people from Italy, Spain, Portugal, Greece and Turkey. This is an example migration for economic reasons pushing people to move in different cultures.

The movements between cultures have unique economic, sociological, psychological and legal consequences. If the people are allowed to leave their state or if the target states selected for migration accept the coming people are examples of political problems aroused from such movements. Especially, the move of people who are occupied in the field of natural sciences has economical consequences for both the state where they leave from, and the state where they migrate to. Hosting a mass community from different cultures has also some sociological consequences. Moreover, these undesired movements affect the psychological state of newcomers.

The consequences of the coexistence of people from different cultures lead states to take necessary measures. States have to determine their position toward the involvement of communities with different cultures either by accepting, or by rejecting them. The literature indicates that states react in two ways on the basis of differences in their political strategies.² A number of states adopt exclusion strategies such as genocide, deportation, population exchanges, assimilation, division, separation and the right to self-determination, while other states constitute moderate policies for managing diversities, such as integration and coexistence.

The Ottoman Empire hosted many different cultures over the centuries. The coexistence of many societies with different religions, cultures, lifestyles, customs and traditions coexisted within the Ottoman Empire for a very long time without losing the features indicates that multicultural policies are a part of the political nature of Ottoman Empire and these policies yielded positive results for many years. The establishment of many states with their own religion, culture, language, and traditions after the collapse of the Ottoman Empire is evidence that the differences had been protected for centuries. The policy applied by the Ottoman Empire to manage differences in the social

² McGarry, John & O'Leary, Brendan & Simeon, Richard 'Integration or Accommodation The Enduring Debate in Conflict Regulation' : Choudhry, Sujit (Editor) (2008) Constitutional Design for Divided Societies p. 46; Taylan Barın, Çokkültürcülük Teorisi ve Ulus-Devlet Anlayışına Etkileri, Gazi University, Department of Public Law, Master thesis, Ankara 2011, s. 28.

structure had some legal consequences.

This study focuses on the legal system formed by the Ottoman Empire to provide a suitable social, political and economic environment for individuals or communities with different cultures. The purpose of the study is to present the successful experiences of the Ottoman Empire in ensuring the coexistence of differences for over centuries. These experiences are very important for the states with multicultural society in our age.

The study starts with the definition of multiculturalism and then explains the multicultural structure of the Ottoman Empire. The legal system constituted by the Ottoman Empire to manage differences is discussed at the end of the study.

Multicultural Society and Its Features

Multiculturalism³ as a term explains the relationships between groups with different cultures living together in the same society, and the reasons and consequences of this coexistence. The meaning of multiculturalism becomes clearer when used with the phrase “multicultural society,” because multiculturalism directly affects the structure and characteristics of a society.

A multicultural society is described as the “community”⁴ composed of the people with different cultures who live together on the same piece of land and cooperate to provide for their basic needs. Based on this definition, in order to be called as a multicultural society, four basic factors must be present in that society. First, there must be a group of people with different cultures on the same piece of land. Second, those people must live together on the same land. Third, the purpose of this coexistence must be to provide for the basic needs. Finally, they must cooperate with each other for this purpose.

Multicultural societies certainly have the first two of the four basic factors, because the groups with different cultures live together on the same piece of land. However, their objectives of being on the same piece of land may vary.⁵

³ There are two terms in the literature as multiculturalism and multiculturalness. Multiculturalism refers a political meaning which indicates that the groups with different cultures are recognized by the main group; while multiculturalness refers to a state of being multicultural; Charles Taylor, Ed. Amy Gutman, Çokkültürcülük; tanınma politikası in “Terimler Hakkında”, İstanbul, Yapı Kredi Yay., 2005, p.9; Barın, master thesis, s. 18.

⁴ “community”http://www.tdk.gov.tr/index.php?option=com_bts&arama=kelime&guid=TDK.GTS.58a024c9240721.11188005 accessed date: 12.02.2017.

⁵ For example, in the multicultural groups formed as a result of mass migration, both the minority groups and the main group may feel their safety in danger. The possibility of the existence of persons among newcomers who previously overturned the public order by committing a crime is seen a threat to the public safety in the host society. Likewise, the newcomers with different cultures are concerned about their safety.

The differences in purpose may interfere with the cooperation between the groups of people with different cultures. The reasons pushing people to leave their societies and the host state policies generated about multiculturalism affect the agreement of the groups on the same purpose and accordingly, the cooperation between groups. Although there are some problems about common agreement and cooperation between groups, those groups become a “multicultural society” by living together on the same land.

As seen from the aforementioned issues, multiculturalism directly affects the basic elements of society. Based on the literature, multicultural society can be defined as follows: The society in which the groups of people with different cultures can live together regardless of their dominance; individuals are equally distant from the state; minorities benefit equally from the resources; and all ethnic and racial groups do not have to hide their cultural distinctiveness can be identified as multicultural society. In the multicultural societies are equally distant from the state. This kind of society provides minorities to take their fair share. All the sub societies can live in multicultural societies keeping their differences.⁶

According to this description there are many groups in multicultural societies and one of those groups is dominant over the others. The criterion used in identifying groups in society is “culture”. However, religion, language, race, history, ideals and other differences are also effective in the formation of the aforementioned groups.⁷

The existence of many groups with different customs, traditions and values is not enough to be a multicultural society. There must be also a justice mechanism that all groups feel obliged to comply with. Considering that there is no dominant group in a multicultural society, no sense of justice alone should dominate the society and each should have equal conditions.⁸ Thus, the literature emphasizes that no sense of justice can be preferred to another and none of them can be imposed on the whole society.⁹ The crucial point here is whether a sense of justice interfere with others or not. Different concepts of justice should be applied together to provide a suitable social environment for all groups in a multicultural society.

⁶ Barın, master thesis, p. 58; Will Kymlicka, *Çağdaş Siyaset Felsefesine Giriş*, p.515; Chandran Kukathas, “Nationalism and Multiculturalism”, in *Handbook of Political Theory*, editors, Gerald F. Gaus and Vhandran Kukathas, London, Sage Publications, 2004, 19. Section, p. 251

⁷ Ertan Özensel, *Çokkültürlülük Uygulaması Olarak Kanada Çokkültürlülüğü*, *Journal of Academic Research*, volume 7, no 1, 2012, p. 59.

⁸ Ali Şafak Balı, *Çokkültürlülük ve Sosyal Adalet*, Çizgi Kitabevi, Konya 2001, p. 205.

⁹ D. Miller, *Social Justice*, Oxford 1972, p. 342.

Investigation of Ottoman Social Structure in terms of Characteristics of Multicultural Societies

The social structure of the Ottoman Empire was comprised of many communities that have different religion, culture, and values. Multicultural society is previously described as the “community” composed of the people with different cultures who live together on the same piece of land and cooperate to provide their basic needs. The factors involved in this definition are explained below.

As known very well, many groups with different values coexisted in the Ottoman Empire over the centuries. The question that should be asked here: what was the glue that held all the groups together in peace? The state had grouped the differences in social structure by considering their religions and sects.¹⁰ In doing so, the state relied on the understanding of Islamic law. In this context, the groups were separated as Muslim and non-Muslim. Non-Muslims were called as the people of “Dhimmi”.

It is possible to understand from the archives that groups with different cultures willingly live together in the Ottoman Empire. The state kept the records of the groups under its sovereignty in the books called “tahrir”, “icmal”, “avarız” and “mufassal”. These books numerically include the heads of households who were taxpayers, the adult singles who had labor potential, and the raya who had tax-exempt legal status and their professional characteristics. These books are one of the records indicating that Muslims and Dhimmis lived together. The following tables reveal how many Muslims and Dhimmis lived in the neighborhoods of Komotini in 1701 and 1709.¹¹

There are many records in the Ottoman archive similar to this example. This record evidently shows that different religious and sectarian groups lived together. From this record, it is understood that the primary factor determining the differences in the society was religion.

When classified as Muslims and non-Muslims, the Ottoman Sultans were committed to protecting the cultures of Dhimmi groups. This commitment took part in the edicts issued by the Sultans once they conquered the regions by depending on the understanding of Islamic law.

¹⁰ Gülnihal Bozkurt, “Osmanlı Devleti ve Gayrimüslimler”, *Türklerde İnsani Değerler ve İnsan Hakları Osmanlı İmparatorluğu Dönemi*, İstanbul, 1992, p. 282

¹¹ For tables and the essays of the tables, see Turan Gökçe, *Osmanlı Nüfus ve İskan Tarihi Kaynaklarından “Mufassal-İcmâl” Avârız Defterleri ve 1701-1709 Tarihli Gümülcine Kazâsı Örnekleri*, *Journal of History Research*, volume XX, NO 1, July 2005.

Town Komotini's population in 1701

Neighborhood	Number of People	Public servant	Muslim	Folk		surplus	Estimated population	%
				Dhimmi	Family			
Cami-Atik	31	7	18	6	5	-	155	7,95
Sabuni Ali	27	8	17	2	4,5	-	135	6,92
Debbaghane	21	4	8	9	3,5	-	105	5,38
Koca Nasuh	18	3	12	3	3	-	90	4,62
Elhac Karagöz	11	11	-	-	2	-	55	2,82
İpekci Hacı	20	7	13	-	3	-	100	5,13
Dhane Ali	56	12	26	18	8	-	280	14,36
Elhac Yavaş	39	133	26	-	6,5	-	180	9,23
Şehreliüstü	36	10	26	-	6,5	-	180	9,23
Açı Hasan	8	3	5	-	1	1	40	2,05
Bağcılı	33	9	24	-	6	1	165	8,46
Yenice	28	7	21	-	3	1	140	7,18
Bergama	16	10	6	-	1,5	-	80	4,10
Arifane	16	9	7	-	2,5	1	80	4,10
Cemiat-i Yahüdiyan	30	-	-	-	3	-	150	7,69
Total	390	113	209	38	59	4	1950	100

Religious groups population of town Komotini in countryside

Date	1701			1719		
	Number of People	Muslim	Dhimmi	Number of People	Muslim	Dhimmi
City	914	784	130	830	745	85
Ağınan	1232	1091	141	1237	1065	172
Cebel	-	-	-	2019	2019	-
Total	2146	1875	271	4086	3829	257

The declaration of Fatih Sultan Mehmet in the Galata Edict issued after the conquest of Istanbul is as follows: "... I ensure that local people (non-Muslims living in Istanbul) can perform their own rituals and traditions like they did before the conquest.¹² This statement indicates that non-Muslims under the sovereignty of the Ottoman Empire were completely free to perform their cultural, traditional and religious rituals.

The archival records also point out that non-Muslims had cultural autonomy given by the Sultans and Muslims respected the rights of non-Muslims to protect their culture, religion and tradition. For example, in the registry of the

¹² The original statement "... Kabul eyledim ki kendilerin ayinleri ve erkânları ne veçhile cari ola-geldiyse, yine ol üslub üzere âdetlerin ve erkânların yerine getüreler" in Paris Bib. Nat. ms. Fonds turc anc. N. 130/Vrk. 78; Ahmed Akgündüz, Pax Ottoman Osmanlı Devleti'nde Gayrimüslimlerin Yönetimi, Timaş Yayınları, İstanbul 2008, p. 32.

kadi (Muslim Judge) dated 2 June 1575, it was written that a woman called as Ali's daughter Hüma, who lived in the neighborhood Eşrefli in Bursa, hold the workers at the looms in her house responsible for any stolen items in the house. In the recording, it was indicated that the woman left home to attend the festival called as "Rose Festival (Gül Donanması)" celebrated by Jews in Bursa and that the workers also left home after the woman went out. This document proves the cultural autonomy of non-Muslims and the existence of a cultural contact between Muslims and non-Muslims.¹³

Even in the dress rules differentiating Muslims from non-Muslims, cultures of the communities were taken into account. On May 8, 1580, in the edict issued during III. Murat period, it was declared that Jews wear red hats, while Christians wear black hats.¹⁴ At first, this obligation may lead to the impression that the Muslim population was under pressure. The hat had never been used in any Muslim country until the 19th century. However, forcing them to wear hats, which was a clothing style unique to non-Muslims, indicates that their cultures, traditions and customs were protected by the state.¹⁵

Muslims and Dhimmis living together in the Ottoman society cooperated to ensure their common fundamental interests. Security is one of those fundamental interests. In this context, the archival records indicate that Dhimmis also provided support for military needs. For example, it was stated in Eyüp Records (No 3) that the non-Muslim persons, Manoli, Isterlot, Apostle and Gabriel, supplied timber and other materials needed by the army during the war.¹⁶ These records prove the cooperation among different groups with common interests in the Ottoman society.

These records and examples illustrate that different communities coexisted in the Ottoman Empire in harmony by cooperating with each other to provide for their common interests.

The Ottoman Empire Multicultural Society System

As mentioned before, the Ottoman society was divided into two groups as Muslims and non-Muslims (Dhimmis). Dhimmis were also classified according to their sects. These classifications made the Ottoman Empire a multicultural society.

¹³ Osman Çetin, *Sicillere Göre Bursa*, p. 61. Narrated by Mehmet Şeker, *Anadolu'da Birarada Yaşama Tecrübesi*, DİB yayınları, Ankara 2002, p. 172. For other examples of cultural interaction see Yavuz Ercan, *Osmanlı Yönetiminde Gayrimüslimler*, Turhan Kitabevi, Ankara 2001, p. 290.

¹⁴ Ahmet Refik, *Onbirinci Asr-ı Hicride İstanbul Hayatı*, İstanbul 1917, p. 74. Narrated by Ercan, p. 184.

¹⁵ Ercan, p. 184.

¹⁶ EYÜB03 volume: 22, page: 53, Verdict no: 8, Original document no: [3b-2].

The reasons that made the Ottoman state a multicultural society are very important to understand the dynamics for a peaceful multicultural environment. The rules of Islamic law constitute the base for these dynamics. Islamic law allows non-Muslims to live in Islamic lands.¹⁷

The statement “Judaism is for Jews, Islam is for Muslims” in the Article 25 of the Medina Constitution implemented during the period of the Prophet Mohammed demonstrates that Jews and Muslims can live together with a relative religious freedom. Likewise, the Prophet Mohammed stated in the letter sent to Najran inhabitants that Dhimmis could live in Islamic lands without any security concerns.¹⁸ This letter also proves that non-Muslims had the freedom of religion and conscience in the Islamic society.

“Life, goods, lands, tribes, worships, worship houses, and all other staff of Najran inhabitants and their relatives were under the protection of the Prophet Mohammed, besides the almighty Allah. No matter what they are, their rites and denominations are performed by their metropolitans and priests. This cannot be changed and prevented by anyone. These terms specified in the agreement are valid as long as they (Najran inhabitants) do not betray Islam and do not oppress others. This agreement is under the protection of the Prophet Mohammed, besides the almighty Allah.”¹⁹

These data and other cases in the history of Islamic law demonstrate that assimilation efforts and violations of the cultural autonomy of non-Muslims were not allowed in the Islamic State. The dynamics of the Ottoman Empire Multicultural Society System was primarily built on this approach.

The system constituted by the Ottoman Empire for different communities was defined as a “Religious Community System (in Turkish-Millet Sistemi)” or “Spiritual Land Tenure System (in Turkish-Ruhani İltizam Sistemi)”.²⁰ In this system, stated as the further application of the multiculturalism by some scholars²¹, every sect was as seen as a distinct social layer with their own religious rituals,²² because Islamic law accepts “the release of non-Muslims in

¹⁷ Arshi Khan, *Osmanlı İmparatorluğu: Çokkültürlülüğün Doğulu Mimarı*, Osmanlıdan Günümüze Ermeni Sorunu, ED. Hasan Celal Güzel, Yeni Türkiye Yayınları, Ankara 2000, p. 172.

¹⁸ M. Akif Aydın, “Eski Hukukumuzda Gayrimüslimlerin Din ve Vicdan Hürriyeti”, *İslâm ve Osmanlı Hukuku Araştırmaları*, İstanbul 1996, p. 230.

¹⁹ Ebu Yusuf, *Kitâb’ül Harac*, (Translator Mehmet Ataullah Efendi, Abbreviator: İsmayil KARAKAYA), Ankara 1982, p. 195–196.

²⁰ Macit Kenanoğlu, *Osmanlı Millet Sistemi Mit ve Gerçek*, Klasik Yayınları, İstanbul 2004, p. 59.

²¹ Khan, p. 173.

²² H. A. R. Gibb, Harold Bowen, *Islamic Society and the West*, Vol. II, London, 1969, p. 211–212.

what they adopted as the religious activities”.²³

Adopting the freedom of religion and conscience paves the way of living with different cultures, values, traditions and lifestyles. Some scholars accept religions and sects as important factors of culture.²⁴ Therefore, this freedom emerges as the most important factors that remain multicultural society.

There are spiritual leaders chosen by the community and approved by the Ottoman State for each religious group. The community interrelated with the state via its leader and the leaders were held responsible for taxes and other liabilities to the Sultan and the officials. There is a lot information in the practice (the assignment decisions) related to the person appointed to the “archbishop” “Metropolitan” is responsible for the works related to the metropolitan, that everybody in the region should accept him as a metropolitan, that they are authorized to conduct marriage and divorce proceedings, that metropolis-owned lands and vineyards will be managed as it was before, and that rituals in the case of the death of a priest or monk will be pursuant to his will.²⁵ Religious leaders were not discharged unless they commit a major crime such as abusing spiritual or religious beliefs of the community and high treason.²⁶ Once such an abuse occurred, members of the community could directly submit their complaints about the leader to officials.²⁷

Analysis of the Multicultural Structure of the Ottoman State in terms of Legal Branches

As mentioned previously, some theorists propose that the communities should be treated with their own sense of justice. In fact, it is possible to see this approach in the Ottoman practices. The Ottoman state took necessary legal measures in order to provide a peaceful multicultural social environment.

The Ottoman state released some religious communities from some legal branches, because these branches were recognized as the rituals of their own

²³ Kenanoğlu, p. 31.

²⁴ Barın, master thesis, p. 9.

²⁵ For the example that Metropolitan Timotyos was appointed to the place of Metropolitan Tenolidos who were authorized in Gebze, Kadıköy and Kuzguncuk, see ÜSKÜDAR84 volume: 10, page: 520 Verdict no: 1019 Original document no: [96a-2]

²⁶ Bozkurt, Gayrimüslim, p. 29;

²⁷ For the complaint of Gabrova Dhimmis about The Tirnova Metropolitan’s demand for more money, see BOA, CTA, No: 75, t: 1135 (1722); For the application of Kayseri inhabitants indicating their demand to get back the more money paid to the Metropolitan Teofilis, see BOA, CTA, No: 74, t: 1134 (1721); For the complaint of metropolitans about the mean behaviors and misconducts of Patriarch Enruman, see BOA, HHT, No: 3627313-B t: 1239 (1823).

religion. Dhimmis had much freedom in the field of private law. On the other hand, they had some special competences in the field of public law. More details about legal sub-branches are provided in the next section.

Dhimmis in terms of family law

The Ottoman Empire was almost never been involved in the issues regarding to family law. Those issues were entirely left to the authority of their religious leaders. For an example, the religious leaders were authorized to judge in the disputes in marriage and divorce matters between Dhimmis.²⁸ Issues such as marriage, termination of marriage, dowry, bride wealth, alimony were counted from the religious rules, and the religious leaders were authorized to apply their own religious laws in these issues.²⁹ Ottoman Empire often sent orders in these matters to the imams in villages and districts, stating that they did not have authorization in performing non-Muslims' marriage ceremonies.³⁰

Community courts resolved the disputes concerning Dhimmis' family issues, but they could also apply to the state courts (in Turkish, Şer'yye Mahkemeleri), if they wish. There are many examples of these practices in the court records.³¹ However, if one of the parties were a Muslim, state courts would handled the case. These legal applications provide a clear understanding about the differences in the Ottoman family law.

Dhimmis in terms of Inheritance law

Most of the scholars in the literature point out that Dhimmis were also subject to their own religious law in inheritance law issues as in the family law.³² There were provisions on this issue in the edict given to the Armenian patriarch by Yavuz Sultan Selim.³³ Heritage related disputes were resolved in the community courts. However, there are many records indicating that Dhimmis applied to kadi, who is the judge in state courts, for the resolution

²⁸ "If a Dhimmi woman divorce from her husband or a Dhimmi man marry a Dhimmi woman or divorce from a Dhimmi woman, nobody except the priest, who they are subject to, comes between them." BOA, Kamil Kepeci Tasnifi, Piskopos Mukataası 2539, p. 3,4; Ercan, s. 204. More examples are available.

²⁹ Bozkurt, Gayrimüslim, p. 14. In Ottoman Turkish "*akd-i nikah, fesh-i nikah ve münāza'aün fih olan iki zimmi arasına başkalarının girmemesi*" For the document see C.ADL., nr. 3580, tarih 1251; Külliyyat-ı Kavanin, v. 5, nr. 2617, date 1260; Kenanoğlu, p. 245.

³⁰ C.ADL., nr. 4047, date 1220; C.ADL., nr. 4077, date 1230.

³¹ For the example, see EYÜB19 volume: 24, p. 181 Verdict no: 175 Original document no: [25(2)b-3, Arabic].

³² For the different arguments about this issue, see Kenanoğlu, p. 251; Bertam Anton-Young J.W.A., The orthodox Patriarchate of Jerusalem, London, 1926, p. 203.

³³ BA, KPT, Piskopos Mukataası 2539, a. 2; Ercan, p. 207.

of heritage related disputes.³⁴ In those cases, rules of Islamic law were implemented, rather than rules of communities own rules.³⁵ The primary constraint for Dhimmis in inheritance law was religious differences, because Muslims and Dhimmis could not be heir with each other under Islamic law. That is, neither a Muslim man married to a non-Muslim woman could leave a legacy to his wife, nor could be her heir.

Dhimmis in terms of Procedural Law

In terms of procedural law, Dhimmis had their own community courts, which were duly authorized in the issues regulated in their religion. They could apply to their community courts for cases related to family law and inheritance law. The statements found in the archival documents support this point:³⁶ “...the cases was commanded to be seen by the patriarchate.”³⁷ However, if one of the parties was a Muslim, the case must be seen in the state courts (sharia courts), and the provisions of Islamic law was implemented to the case. Dhimmis could also apply to the state courts or the Sultan’s court (Divan-ı Hümayun) for any case. Many recorded examples are available in the court achieves.³⁸

Dhimmis in terms of the Criminal Law

Dhimmis living in the Ottoman Empire were subject to the provisions of the Ottoman criminal law. The procedures related to crime and punishments were the same for Muslims and Dhimmis with some exceptions. The rules of law did not change in any case, even if the parties had different religious beliefs.³⁹ For an example, in the case of wounding, the same provisions of the Ottoman criminal law were implemented to give a verdict about the compensation which was payable to the victim.⁴⁰

The exceptions related to the actions that Dhimmis should do or should not do according to their religion. For example, drinking alcohol was a crime according to Islamic law and there was a definite penalty for this crime. However, drinking alcohol was not specified as a crime for Dhimmis, because it was free in their religion. There are available records indicating that some

³⁴ RUMELİ56 volume: 14, page: 171 Verdict no: 166 Original document no: [31a-2]

³⁵ For the fetwa given by Ebu Suud Efendi, see Ertuğrul Düzdağ, Şeyhülislam Ebussuud Efendi Fetvaları Işığında 16. Asır Türk Hayatı, İstanbul 1972, s. 99-100.

³⁶ “The edict on the dispute can be resolved through Patriarchate”

³⁷ For examples, see A.DVN. File no: 15, Document nr: 2, date: 1262.

³⁸ BOA, Mühimme Book No 7, volume II, Ankara 1999, Verdict no 1280, p. 54.

³⁹ For examples, see BOA, Adliye ve Mezahib İradeleri Kataloğu, No: 221, General No: 624, Special No: 6, date: 16 Ra 1311 (1893); Ercan, p. 186.

⁴⁰ Aydın, Gayrimüslim, p. 231; Mehmet Akif Aydın, Türk Hukuk Tarihi, İstanbul 1999, p. 148.

Muslims felt themselves uncomfortable when drunken Dhimmis passed around the mosque.

It was determined by the rules of the criminal law that the fines to be paid by Dhimmis were the half of the fines to be paid by Muslims for some types of crimes. In the laws issued by the Sultan Suleiman, it was indicated that in the cases of wounding and murder, retaliation will not be applied if the perpetrator is a non-Muslim person and half of the blood money will be taken from the Dhimmi perpetrator: "...if this stated crime was committed by a Dhimmi, half of the blood money must be taken from him."^{41/42} The rationale for this rule can be attributed to different causes. In my opinion, the state wanted Dhimmis to be economically more comfortable. On the other hand, the state followed the taxes payable by Dhimmis very well. The state did not see Muslims and Dhimmis were in an equal situation. This can be the other justification of this legislative provision.

Even though some privileged fine legislative regulations were executed for dhimmis, some other criminal legislative regulations did not protect them as Muslims. For an example, one of the elements of libel of chastity (hadd-i kazf in Ottoman Turkish) was that the person who was defamed must be Muslim. If the person who was defamed was Dhimmi, he was punished with a different type of punishment, the punishment "taz'ir" rather than "hadd"^{43, 44}

The system created by the State resulted in that Dhimmis could be punished by the religious leaders.⁴⁵ It is understood from the appointment decisions that the religious leaders were authorized to do so.⁴⁶ The records indicate that the spiritual leader punished Dhimmis with a couple of penalties such as exile and imprisonment.⁴⁷ These kinds of penalties are explained as disciplinary punishments for Muslims in the literature.⁴⁸

⁴¹ Kanunname-i Al-i Osman, TOEM edition, p. 3; Ercan, p. 189.

⁴² Ömer Lütfi Barkan, Kanunnameler v. 1, III. Türk Tarih Kongresi Zabıtları, Ankara 1948, p. 394.

⁴³ Hadd penalties were the fixed punishments, however taz'ir punishments can be changed according to the case, time etc. For detail information see Uriel Heyd, *Studies in Old Ottoman Criminal Law*, Clarendon Press, Oxford 1973, p. 340.

⁴⁴ Yusuf Fidan, *İslâm Hukukunda Ehl-i Kitab Kavramı ve Hükümleri*, Konya 1998 (Unpublished doctorate thesis), p. 239.

⁴⁵ Bozkurt, *Gayrimüslim*, p. 293; BOA, CTA, No: 4205, t: 11/R/1204, (1789).

⁴⁶ Kudüs-i Şerif Beratı dated as 29 July / 8 August 1850; Ermenilerin Berat Def. 9, p. 59-60; Ercan, p. 197, 198.

⁴⁷ Kenanoğlu, p. 221.

⁴⁸ Kenanoğlu, p. 224.

Dhimmis in terms of Tax Law

Dhimmis were held liable to pay two more tax types, beside the taxes given by Muslims. The first one is “cizye” which was paid due to the fact that Dhimmis did not do military service. The ones, who were capable of doing the military service, but did not, paid this tax. Clergymen, disabled and elderly women were exempt from this tax.⁴⁹ The second tax paid by Dhimmis was “harāc” collected from the landowner Dhimmis. Some other taxes were taken from the Dhimmis with high status.⁵⁰

Conclusion

As a result of the study, the following conclusions were reached.

1. The reasons that make a society a multicultural society directly affect the measures to be taken by the state in order to sustain public order.
2. It is possible to see that all the necessary for a multicultural society existed in the social system of the Ottoman Empire.
3. The Ottoman Empire did not assimilate the different groups in the society, but successfully provided a moderate social environment for them.
4. Depending on the rules of Islamic law, the State accepted the different communities as they are.
5. The State classified the groups according to their religion and sects. These criteria provided a safe and peaceful environment including different religions, cultures, traditions, customs and languages.
6. The State ensured the applications of Dhimmis’ special legal systems by giving authorization to the spiritual leaders.
7. The State imposed some limitations on the applications of Dhimmis’ special legal system and on the authorization of their courts.

As a result, the cultural autonomy given to Dhimmis sustained the multicultural social structure of the Ottoman Empire.

⁴⁹ Ercan, p. 251.

⁵⁰ Ercan, p. 268.

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